IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4081 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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HASANBHAI MUSABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4081 of 2001

MR AJ PATEL for Petitioner No. 1-4/3

MR SP SEN ASSTT GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 14/09/2001

ORAL JUDGEMENT

#. Heard Mr.A.J.Patel, learned advocate appearing on behalf of the petitioner and Mr.S.P.Sen, learned AGP for the respondents - State. This petition has been admitted by this Court on 15th June, 2001 and Rule was made returnable on 17th July, 2001.

#. The brief facts giving rise to the present petition are as under :-

According to the petitioner, mutation entry No.1098 was effected in village Form No. 6 in respect of Survey Nos. 77 and 80 of village Tandalja, Taluka and District Baroda. The Town Planning Officer prepared redistribution statement in respect of the T.P.Scheme No.21 of Baroda. The petitioner also pointed out that Suit filed in Cout of the Civil Judge [S.D.], Baroda for in respect of the lands in question, was compromised between the parties on 24th March, 1999. Thereafter, the petitioner made application to the Collector, Baroda for permitting them to convert the land into Non Agriculture on 31st March, 1999. Thereafter, the Collector, Baroda rejected N.A. permission by order dated 21st June, 1999 in respect of the lands in question to the petitioners. The petitioners have challenged the order of Collector, Baroda dated 21st June, 1999 before the Additional Chief Secretary [Appeals], Revenue Department, who has allowed the revision application filed by the petitioners and set aside the orders of the Collector, Baroda and directed him to grant N.A. permission within 21 days to the petitioners by order dated 9/10th September, 1999. In pursuance of the order passed by the Additional Chief Secretary, Revenue Department, the Collector, Baroda required the petitioners to furnish certain information within two days by his letter dated 15th October, 1999. The petitioner has furnished said required details to the Collector, Baroda along with documentary evidence to the Collector, Baroda on 16th October, 1999. Thereafter, the Collector, Baroda has asked for extension of time before the Additional Chief Secretary, Revenue Department, in turn, the Additional Chief Secretary, Revenue Department has directed the Collector, Baroda to grant N.A. permission within 10 days from 29th October, 1999. However, on 24th July, 2000 the alleged erstwhile owners of the land in question filed objections before the Collector, Baroda against grant of N.A. permission to the petitioners which is at pg.39 of this petition. Even before that also, the Deputy Secretary, Revenue Department, Gandhinagar asked the Collector, Baroda to render explanation for delay in grant of N.A. permission to the petitioner on his part. Thereafter, on 17th August, 2000, the petitioners were made application to the Collector, Baroda for grant of N.A. permission. However, the Collector, Baroda again required the petitioners vide his letter dated 1/4th May, 2001 to furnish certain information as regards the suit filed by them in the Civil Court. On 5th May, 2001, the

petitioners immediately furnished requisite information to the Collector, Baroda. It is also case of the petitioners that even thereafter also on 15th / 17th May, 2001 again required the petitioners to furnish some information as was sought on 4th May, 2001. Thus, the case of the petitioners is that the Collector, Baroda has been repeatedly raising one query or the other and is not passing any order in respect of grant of N.A. permission despite the Additional Chief Secretary, Revenue Department has asked him to grant N.A. permission within stipulated time and under the aforesaid set of circumstances, the petitioners are forced to file the present petition.

#. Learned advocate Mr.A.J.Patel, for the petitioners has submitted that the higher authority i.e. the Additional Chief Secretary, Revenue Department by his order dated 9th / 10th September, 1999 directed the Collector, Baroda to grant N.A. permission within 21 days and even on subsequent occasion again directed to comply the earlier direction within 10 days vide his order dated 29th October, 1999. Not only that the Deputy Secretary, Revenue Department has also sought an explanation of the Collector, Baroda for delay in grant of N.A. permission to the petitioners on his part for not granting N.A. permission in respect of the land in question. Thus, despite the case of the petitioners was found to be genuine by the higher authorities of the Collector, Baroda and though the higher authority directed the Collector, Baroda but on the contrary, the Collector, Baroda time and again asked for more and more details from the petitioners and such details which are absolutely not relevant for granting N.A. permission in favour of the petitioners. It is also submitted that the intention of the respondent - Collector, Baroda for taking into consideration the objections filed by the alleged erstwhile owners, seems to be not just and proper and under the guise and pretext of the objections of the alleged erstwhile owner, the Collector, Baroda is sitting tight over the matter which is not at all relevant to the issue pending before the Collector, Baroda. Therefore, the submission of Mr.A.J.Patel, learned advocate for the petitioner is that some suitable directions may be issued to the respondent - Collector, Baroda to grant N.A. permission immediately without any delay. However, he also submitted that even in a case, if the Collector, Baroda wants any further details from the petitioners in respect of the grant of N.A. permission, the petitioners are ready and willing to furnish the same immediately. In short, the submission of Mr.A.J.Patel, learned advocate for the petitioner is that when the order of

refusing the N.A. permission dated 21st June, 1999 passed by the Collector, Baroda, has been reversed by the higher revisional authority even before two years back, now the Collector, Baroda must take the decision in the matter which is pending before him since considerable long time. Therefore, the request of Mr.A.J. Patel, learned advocate for the petitioners, on behalf of the petitioners is that some suitable direction may be issued the Collector, Baroda - respondent No.2 herein to decide the application directing the respondent No.2 to grant N.A. permission to the petitioners within some stipulated time limit.

#. Learned AGP Mr.S.P.Sen appearing on behalf of the respondents - State has submitted that looking to the facts emerging from the record, the Collector, Baroda seems to have required the petitioners from time to time to furnish the details in respect of the case of the petitioners as the details supplied by the petitioners did not find to be sufficient by the respondent Collector and resultantly, the Collector has not passed orders as per the direction issued by the higher / revisional authority. It is also his submission that if the Collector, Baroda requires any further information and details, in that the petitioners must supply the same in the interest of justice but as per the submission of learned advocate Mr.A.J.Patel for petitioners, when the petitioners are ready and willing to supply any further details in respect of the grant of N.A. permission for the land in question, in that case, the Collector, Baroda may be directed suitably to pass appropriate order in respect of application of the petitioners for grant of N.A. permission for the land in question.

#. I have considered the submissions of learned advocates for the respective parties. Looking to the record of the present case, it is pertinent to note that no just and fair attitude adopted by the respondent Collector for not granting N.A. permission in favour of the petitioners inspite of the fact that the higher authority Additional Chief Secretary [Appeals], Revenue Department, while setting aside his earlier order dated 21st June, 1999 by order dated 9th / 10th September, 1999 directed the respondent Collector, Baroda to grant N.A. permission within 21 days to the petitioners and even on subsequent occasion also, vide order dated 29th October, 1999 granted extension of time for 10 days to comply the the directions earlier issued. It is also pertinent to the note that the Deputy Secretary, Revenue Department, Gandhinagar has also called upon the respondent Collector to render his explanation for the delay and not granting

N.A. Permission to the petitioners. Thus, despite the specific orders of the higher authorities time and gain, it is surprising that the Collector, Baroda is sitting tight over the matter and since the date of filing of this petition, the directions of the higher authority have not been complied and the petitioners are forced to filed the present petition. However, from the perusal of the papers of this case, it seems that the alleged erstwhile owners of the land in question have submitted some objections before the Collector disputing the ownership of the land in question. But what is important to be considered before this Court that whether it is the jurisdiction of the Collector, Baroda, especially while deciding the application of petitioners for grant of the N.A.permission in respect of the land in dispute, to consider the dispute of title as has been raised by the alleged erstwhile owners. However, it is observed that even if the alleged erstwhile owners of the land in dispute have some dispute as to claim of any legal right over the land in question, then also, it is always open for them to approach the civil forum to agitate such disputes and obviously, for that they are required to approach the civil court to have the dispute of title decided in their favour. By merely filing the objections before the Collector concerned at a stage, when the application of the petitioners for grant of N.A. permission is pending, the alleged erstwhile owners cannot raise the dispute of title to be decided by the Collector. Similarly, the Collector ought to have considered the aspect that if the application filed by the petitioner is otherwise legally proper, then also, the Civil Court is right forum to decide the dispute of title as raised by the alleged claimants of the title. However, it is necessary to note that from perusal of pg.33 - a letter written by the Collector to the petitioners to submit certain details as civil suit and an affidavit of the petitioners stating that no any other proceedings pending before any other Court. The Collector, Baroda also made necessary inquiry from the office of the Competent Authority and Additional Collector, Vadodara and Competent Authority and Additional Collector also seems to have replied vide letter dated 19th June, 1999 to the Collector stating that now the Urban Land Ceiling Act is repealed with effect from 31st March, 1999 and now the claim of existence of Section 21 does not arise and therefore, if the N.A. permission is granted in favour of the petitioners, their office does not have any objection in the matter. The alleged erstwhile owners have submitted two applications vide dated 24th April, 2000 and another on date 24th July, 2000, wherein they seem to have

pointed out they are the real owners of the land in question but this aspect was not at all required to be examined by the concerned Collector, Baroda. However, for such irrelevant aspect for grant of the N.A. permission, the Collector has asked for details in respect of the pendency of the civil suit between the parties. It has come on record that the petitioners have supplied the details so sought. Mr.A.J.Patel, learned advocate for the petitioner has also relied upon the order passed by this Court [Coram : Mr.Justice A.R.Dave, J.] in Special Civil Application No. 8114 / 1999 dated 6th December, 1999, wherein because the civil suit was pending, N.A. Permission was not granted to the concerned petitioner. Therefore, this Court has taken a view that even during the pendency of the civil suit between the parties, such application can be considered. In light of this facts, the Collector - respondent is required to take decision in respect of the application seeking N.A. permission submitted by the petitioner. However, if the Collector wants any further details from the petitioners relevant for deciding the N.A. Permission application, in that case, the Collector should ask the same from the petitioners at once and after considering the same, he has to pass necessary orders in view of the order 9th / 10th Sept, 1999 passed by the Additional Chief Secretary [Appeals], Revenue Department in revision application and further order dated 29th October, 1999.

#. In view of above discussion, the petition succeeds. It is directed to the respondent No.2 or his successor Collector, Baroda is directed to decide the N.A. permission application filed by the petitioners in respect of the land in question after taking into consideration the direction issued by the Additional Chief Secretary [Appeals], Revenue Department in Revision Application No.4/99 dated 9th / 10th September, 1999 and the further order dated 29th October, 1999. It is made clear that if the respondent No.2 wants any further details from the petitioner, he can ask the petitioners to furnish the same within period of 15 days from the date of receiving the certified copy of this order and after completing all the requisite formalities, it is further directed to the respondent No.2 or his successor Collector will pass appropriate orders as directed hereinabove, in accordance with law ignoring any objection submitted by any party in respect of the title of the land in question, within one month from the date of receiving any relevant details if required by the Collector. The petition stands allowed accordingly. Rule is made to the aforesaid extent with no order as to

costs.

Date : 14-9-2001 [H.K.Rathod, J.]

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